

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
 )  
Assessment and Collection ) MD Docket No. 98-200  
of Regulatory Fees for )  
Fiscal Year 1999 )

**COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.**

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Inquiry in the above-referenced proceeding. 1/ As explained more fully below, the Commission should amend its regulatory fee structure for geostationary orbit space stations so that existing licensees ("GSOs") are not saddled with the cost of developing rules and procedures for new geostationary satellite services. The Commission should also amend its regulatory fee schedule so that COMSAT and non-U.S.-licensed satellite service providers are required to pay their fair share of the costs associated with regulating satellite systems.

**INTRODUCTION**

GE Americom applauds the Commission's decision to institute this proceeding to examine the inequities created by its regulatory fees system. As the

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1/ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, *Notice of Inquiry*, FCC 98-298 (rel. Dec. 4, 1998) ("NOI").

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Commission is well aware, regulatory fees for GSOs have risen precipitously over the last several years. In 1998, the Commission increased the annual regulatory fee for geostationary space stations from \$97,975 to \$119,000 per operational satellite. <sup>2/</sup> This was a 21% increase over the regulatory fee assessed the previous year. Moreover, last year's assessment represented a 69% increase over the \$70,575 regulatory fee set by the Commission in 1996. <sup>3/</sup> Regulatory fees for existing GSOs would have risen even further had it not been for the 25% ceiling on increases that was imposed by the Commission to prevent rate shock for licensees. *See 1998 Report and Order* at ¶ 28.

The inequities created by these rate increases were identified by various satellite service providers each year. <sup>4/</sup> However, despite being presented with these inequities, the Commission has continued to apply its fee methodology to all existing GSO licensees. In the *Fiscal Year 1998 Regulatory Fees Proceeding*, the Commission acknowledged the problems its annual increases in fees were creating, and indicated that it intended to issue a *Notice of Inquiry* to examine the situation.

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<sup>2/</sup> See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98-36, *Report and Order*, FCC 98-115 (rel. June 16, 1998) ("*1998 Report and Order*") at Attachment F.

<sup>3/</sup> See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, *Report and Order*, 12 FCC Rcd 17161 (1997) at Attachments F and G.

<sup>4/</sup> See, e.g., Comments of PanAmSat Corporation, MD Docket No. 98-36 (FY 1998), filed Apr. 22, 1998, at 2; Comments of Columbia Communications Services, MD Docket No. 98-36 (FY 1998), filed Apr. 22, 1998, ("*1998 Columbia Comments*") at 2-4; Comments of GE American Communications, Inc., MD Docket No. 98-186 (FY 1997), filed Mar. 25, 1997, at 4.

The *NOI* proposes to reexamine, among other things, whether the regulatory fee structure specific to GSOs should be changed, and whether a regulatory category for “new services” should be added to the Commission’s cost accounting system. See *NOI* at ¶¶ 10, 16. As described in further detail below, the Commission should reform its fee requirements in three ways so that GSOs are not burdened with the same inequities that have saddled them in the past.

First, the Commission should make further efforts to distinguish between costs created by existing GSO licensees and costs created by new satellite services. Only in this way will existing licensees be spared from having to subsidize the start-up costs of their future competitors. Second, the Commission should require COMSAT to pay its fair share of the costs associated with regulating GSO systems. Third, the Commission should adopt fee payment rules for non-U.S.-licensed satellite service providers. These reforms are necessary to ensure that a pro-competitive, level playing field for all satellite service providers operating in the U.S. is realized.

**I. EXISTING GSO LICENSEES SHOULD NOT BE FORCED TO SUBSIDIZE NEW SATELLITE SERVICES**

In the Commission’s *Fiscal Year 1998 Regulatory Fees Proceeding*, a number of commenters argued that existing GSO satellite service licensees unfairly bear the cost of the Commission’s policy and rulemaking activities relating to the development of new GSO satellite services. *Id.* at ¶ 16. Because of the tight collection schedule it faced, however, the Commission did not evaluate this

argument in its *1998 Report and Order*. The Commission instead indicated that it would seek comment on this argument in a subsequent proceeding. The *NOI* accordingly requests comment on “alternate approaches to [the Commission’s] current regulatory fee cost recovery methodology for new and developmental services.” *Id.* at ¶ 17.

Section 9 of the Communications Act (“Act”) requires that regulatory fees be “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.” 47 U.S.C. § 159(b)(1)(A). The term “reasonably related” means that the fees imposed on existing licensees should bear a direct correlation to the costs incurred by the Commission in regulating such licensees.

The current annual regulatory fee of \$119,000 that is imposed on each geostationary orbit space station does not meet this standard. The regulatory burden placed on the Commission by existing GSO licensees is minimal. <sup>5/</sup> The Commission has substantially deregulated satellite services, and most of these services are now offered on a non-common carrier basis. This has eliminated the need for existing GSO licensees to file tariffs, and has excused the Commission from having to engage in a number of other enforcement-related activities vis-à-vis satellite service providers under Title II of the Act.

The most resource-intensive aspect of the Commission’s regulation of GSOs licensees occurs at the application processing stage. It is during this stage

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<sup>5/</sup> See Comments of GE American Communications, Inc., MD Docket No. 98-36 (FY 1998), filed Apr. 22, 1998 (“1998 GE Americom Comments”) at 1-2, n.1.

that the Commission participates in international coordination efforts, as well as resolves any interference issues among U.S. licensees. Potential GSO licensees, however, already cover the costs associated with these activities by paying hefty application fees of almost \$90,000 to launch and operate their space stations. 47 C.F.R. § 1.1107. The Commission therefore already recoups its processing costs from the application fees themselves, and should not rely on annual regulatory fees to finance costs relating to processing.

In light of the fact that existing GSO licensees do not impose significant costs on the Commission, it stands to reason that most of the Commission's resources as they relate to GSOs are being devoted to the development of rules and procedures for new satellite services. <sup>6/</sup> Most satellite-related rulemaking proceedings relate to the development of services using new frequency bands and do not address the regulation of spacecraft that are already in orbit. <sup>7/</sup> The costs created by these proceedings should not be recovered exclusively from existing GSO licensees in the C- and Ku-bands. Instead, these costs should be treated as overhead and recovered proportionally from all fee payors. Otherwise, existing satellite operators will continue to be put in the position of financing the start-up costs of their future competitors.

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<sup>6/</sup> See, e.g., 1998 GE Americom Comments at 4; 1998 Columbia Comments at 3.

<sup>7/</sup> See, e.g., *In the Matter of Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands, et al.*, IB Docket No. 97-95, RM-8811, *Report and Order*, FCC 98-336 (rel. Dec. 23, 1998); *In the Matter of Assignment of Orbital Locations to Space Stations in the Ka-band*, DA 97-967, *Order*, 13 FCC Rcd 1030 (1997).

## II. COMSAT SHOULD BE REQUIRED TO PAY ITS FAIR SHARE OF THE COSTS ASSOCIATED WITH REGULATING SATELLITE SYSTEMS

Section 9 of the Communications Act requires that the Commission recover costs relating to its enforcement activities, policy and rulemaking activities, user information services, and international activities from entities within its jurisdiction. 47 U.S.C. § 159(a)(1). COMSAT is clearly within the Commission's jurisdiction. <sup>8/</sup> It files applications pursuant to Title II and Title III of the Act, pays application fees for space stations, and is subject to the Commission's directives with respect to its investments in INTELSAT and Inmarsat systems. *See* 47 U.S.C. § 741; *see also id.* at § 158.

More importantly, COMSAT creates costs for the Commission in all of the areas identified by Congress as being relevant to the assessment of regulatory fees. COMSAT's operations require the Commission to engage in enforcement measures, and to conduct policy and rulemaking activities with respect to satellite and spectrum management issues. For example, the Commission recently concluded a lengthy proceeding in response to a COMSAT request for nondominant treatment. <sup>9/</sup> COMSAT clearly derives benefits from such Commission regulatory

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<sup>8/</sup> *See* 47 U.S.C. § 741 (deeming COMSAT "fully subject to the provisions of title II and title III of [the] Act"); *see also In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, *Notice of Proposed Rulemaking*, 11 FCC Rcd 16515, 16528 (1996) ("1996 NPRM") (indicating that "approximately 14.7% of the costs attributable to space station regulatory oversight . . . is directly related to INTELSAT and Inmarsat Signatory activities").

<sup>9/</sup> *See In the Matter of COMSAT Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, File No. 60-

activities, and, consistent with Section 159(b)(1)(A), should be required to pay regulatory fees.

Requiring COMSAT to pay regulatory fees will contribute significantly to maintaining healthy and robust competition in the marketplace for satellite services. Private providers of satellite services such as GE Americom compete directly with COMSAT for customers. COMSAT is able to maintain a distinct advantage vis-à-vis its competitors, however, because, despite its access to one of the largest fleet of satellites in the world, COMSAT is not required to pay geostationary satellite regulatory fees. The exclusion of COMSAT from the regulatory fees requirement is inappropriate because the Commission's extensive oversight over COMSAT generates significant costs that, under the current fee structure, are being recovered from COMSAT's competitors. <sup>10/</sup> This artificial transfer of costs gives COMSAT an unfair advantage in the marketplace for satellite services and should be corrected.

Nothing in the Satellite Act suggests that COMSAT should be exempt from paying regulatory fees. <sup>11/</sup> The Commission implicitly recognized this when it

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SAT-ISP-97, Order and Notice of Proposed Rulemaking, FCC 98-78 (released April 28, 1998). The record in that proceeding was voluminous, and the Commission's decision was over 90 pages long.

<sup>10/</sup> See 1996 NPRM at 16527 (proposing to establish a Signatory fee for COMSAT "because [the Commission's] geosynchronous space station fee now recovers a significant amount of costs directly attributable to [its] oversight of the U.S. Signatory to [INTELSAT and Inmarsat]").

<sup>11/</sup> In the past, COMSAT has argued that the legislative history of the Section 9 prevents the Commission from assessing regulatory fees on COMSAT because "fees [cannot] be applied to space stations operated by international organizations subject

held that “the costs of [regulatory] activities related to the signatories should be recovered directly from the U.S. Signatories rather than from space station licensees generally.” 1996 NPRM at 16527-28. Although the D.C. Circuit struck down the Commission’s attempt to place COMSAT in a newly-created fee category, it never held that COMSAT was statutorily exempt from having to pay regulatory fees. <sup>12/</sup> Rather, the Court held that the Commission’s creation of a *new* fee category for COMSAT (*i.e.*, a “Signatory fee”), absent a change in law or policy, was inappropriate. *Id.* The Court in no way limited the Commission’s ability to apply an *existing* fee category, such as the one for geostationary space stations, to COMSAT.

The Commission therefore can and should subject COMSAT to the existing fee category for geostationary space stations. In the alternative, the Commission should, consistent with the D.C. Circuit’s decision, initiate a formal rulemaking to establish a new fee category to recover the Signatory and other regulatory-related expenses created by COMSAT. Only through such action will the Commission begin to achieve a level playing field for COMSAT and its GSO competitors, facilitating competition and bringing lower prices to all end users.

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to the International Organization Immunities Act, 22 U.S.C. § 288 *et seq.*” See H.R. Rep. No. 102-207, 102d Cong., 1st Sess. 26. While the Conference Report may prevent the Commission from assessing regulatory fees directly on INTELSAT and Inmarsat, COMSAT is a private, for-profit, U.S. corporation that is not protected by this provision.

<sup>12/</sup> See *COMSAT Corp. v. Fed. Communications Comm’n*, 114 F.3d 223, 227-28 (D.C. Cir. 1997).



### **III. THE COMMISSION SHOULD REQUIRE FOREIGN SATELLITE SERVICE PROVIDERS WHO COMPETE WITH U.S. LICENSEES TO PAY REGULATORY FEES**

The Commission also should require non-U.S.-licensed satellite service providers who operate in the U.S. to pay their fair share of regulatory fees. As indicated above, the Commission's regulatory fee requirements exist in part to defray the costs associated with conducting rulemaking proceedings and engaging in other regulatory activities. Foreign carriers operating in the U.S. benefit from these proceedings. In order for U.S. licensees to compete effectively against their foreign counterparts, the costs associated with regulating the satellite market must be evenly distributed among all beneficiaries. The best way to do this is to require foreign carriers operating in the U.S. to pay their fair share of regulatory fees.

GE Americom raised the issue of requiring non-U.S.-licensed satellite service providers to pay regulatory fees when the Commission was considering letting these carriers enter the domestic market in the *DISCO II Proceeding*. <sup>13/</sup> The Commission, however, decided to "address issues relating to fees in a separate proceeding." <sup>14/</sup> The instant *NOI* offers the Commission an ideal forum in which to consider this issue. The Commission should take this opportunity to promote the

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<sup>13/</sup> Comments of GE American Communications, Inc., IB Docket No. 96-111 (filed August 21, 1997) at 10-11.

<sup>14/</sup> See *In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, et al.*, IB Docket No. 96-111, *Report and Order*, 12 FCC Rcd 24094, 24169 (1997).

even distribution of regulatory fees so that a level playing field for all satellite service providers operating in the U.S. can be realized.

## CONCLUSION


For the reasons stated above, the Commission should amend its regulatory fee structure so that existing GSO licensees are not saddled with the costs of developing new services. The Commission should also change its regulatory fee structure so that COMSAT and non-U.S.-licensed satellite service providers pay their fair share of the costs associated with regulating satellite systems in the U.S.

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January 7, 1999

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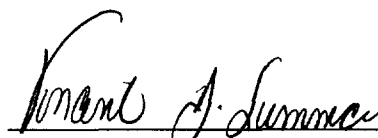
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